

ROCCO A. TRECASTA

MAY 1, 1996.—Committed to the Committee of the Whole House and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 2765]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2765) for the relief of Rocco A. Trecosta having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

H.R. 2765, a meritorious claim, would pay to Mr. Rocco A. Trecosta, a former teacher in the Department of Defense Overseas Dependent Schools, backpay he would have been awarded had he been a member of the plaintiff class in *March v. United States*, 506 F.2d 1306 (D.C. Cir. 1974).

BACKGROUND

In *March v. United States*, 506 F.2d 1306 (D.C. Cir. 1974), the U.S. Court of Appeals held that the Department of Defense (DOD) had not properly implemented the pay-setting procedures established by Public Law 89-391. That law provided that:

The Secretary of each military department shall fix the basic compensation for teachers and teaching positions in his military department at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population.

The Court of Appeals held that DOD's calculation of the Overseas Dependents Schools (ODS) teacher's salaries by using the preceding year's salaries of stateside teachers violated the statutory requirement that ODS teachers be compensated "at rates *equal* to the average of the rates of basic compensation for similar positions . . .", and directed DOD to base the ODS teachers' salaries on the basis of current salaries being paid to stateside teachers. The Court also held that the plaintiffs were entitled to recover money damages. A judgment was entered in the District Court on June 30, 1975, providing backpay for the plaintiffs for the period from April 14, 1966, to the date of that judgment.

Out of 23,000 potential plaintiffs, four individuals were specifically excluded from coverage under the judgment. Three of the individuals were excluded because they specifically chose not to be members of the class. Mr. Trecosta, the fourth individual, had previously brought an action in the Court of Claims which was denied by the Court.

But for Mr. Trecosta's suit in the Court of Claims, he would have been considered part of the plaintiff-class in *March*. Furthermore, if not for that suit, he could have been paid administratively. After *March* was decided, Mr. Trecosta requested administrative payment of his claim. The General Accounting Office denied his claim, stating that the matter was *res judicata* and that the provisions of 28 U.S.C. 2519 precluded administrative payment of his claim. Those provisions provide that a final judgment of the Court of Claims against any plaintiff bars any further claim against the U.S. arising out of the matters involved in the case. These provisions did not, however, apply to the other three individuals, who were paid backpay on an independent administrative basis.

No other individual is in precisely the same position as is Mr. Trecosta. He is the only teacher who challenged DOD's practices, and was excluded from the class solely because of that challenge.

COMMITTEE ACTION

On December 13, 1995, the Subcommittee on Immigration and Claims favorably recommended the bill H.R. 2765, to the Judiciary Committee.

On March 12, 1996, the Committee on the Judiciary favorably ordered reported by voice vote H.R. 2765, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2765, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 15, 1996.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2765, a bill for the relief of Rocco A. Trecosta, as ordered reported by the House Committee on the Judiciary on March 12, 1996. The bill would require the Secretary of Defense to make a payment of between \$5,000 and \$10,000, depending on the amount withheld for federal income tax and other withholdings. We expect this outlay would occur in fiscal year 1996. Because the bill would increase direct spending, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

JUNE E. O'NEILL, *Director.*

AGENCY VIEWS

The Comptroller General recommends that the Congress enact legislation that would treat Mr. Murty as though he had been a member of the plaintiff class in *March v. United States*, 506 F.2d 1306 (D.C. Cir. 1974). According to the General Accounting Office: "we believe his situation is extraordinary and contains such elements of equity as to be deserving of the consideration of Congress."

The Executive Communication from the General Accounting Office follows:

U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, November 2, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: The American Federation of Teachers (AFT), has asked that we provide to your Committee a Meritorious Claims Act recommendation that the General Accounting Office sent to Congress on July 12, 1982. It proposed legislation under the

Meritorious Claims Act, now 31 U.S.C. § 3702(d) (1988), to authorize backpay to Mr. Rocco A. Trecosta, a former teacher in the Department of Defense Dependents schools.

A copy of our original request and AFT's letter to us is enclosed. An identical letter has been sent to the Chairman of the Senate Judiciary Committee.

Sincerely yours,

SEYMOUR EPOS
(For Robert P. Murphy, *General Counsel*).

Enclosures.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, DC, July 12, 1982.

Hon. GEORGE BUSH,
President of the Senate.

DEAR MR. PRESIDENT: Pursuant to the Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976), we have the honor to transmit our report and recommendation to the Congress concerning the claim of Mr. Rocco A. Trecosta for backpay, with the request that you present the same to the United States Senate.

Mr. Trecosta, a teacher in the Department of Defense Overseas Dependents Schools, makes a claim for backpay on the basis of *March v. United States*, 506 F.2d 1306 (D.C. Cir. 1974). The Court of Appeals there held that the Department of Defense had not properly implemented the pay-setting procedures of Pub. L. No. 89-391, April 14, 1966, 80 Stat. 117, and that teachers in the Overseas Dependents Schools System were entitled to backpay. *March v. United States* was brought as a class action, but Mr. Trecosta was excluded because he had been the plaintiff in *Trecosta v. United States*, 194 Ct. Cl. 1025 (1971), in which the Court of Claims ruled that procedures used by the Department of Defense under Pub. L. 89-391 were proper.

For the reasons set forth in our report we believe that Mr. Trecosta's claim contains such elements of equity as to be deserving of consideration by the Congress as a Meritorious Claim.

We are sending an identical report to the Speaker of the House of Representatives.

Sincerely yours,

MILTON J. SOCOLAR
(For Comptroller General of the United States).

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, DC, July 12, 1982.

To the CONGRESS OF THE UNITED STATES:

In accordance with the Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976) (Meritorious Claims Act), we submit the following report and recommendation concerning the claim of Mr. Rocco A. Trecosta, a teacher in the Department of Defense Overseas Dependents Schools.

Mr. Trecosta's claim is for backpay equal to that received by the members of the plaintiff-class in *March v. United States*, 506 F.2d. 1306 (D.C. Cir. 1974). In that decision, the U.S. Court of Appeals

held that the Department of Defense (DOD) had not properly implemented the pay-setting procedures established by Pub. L. No. 89-391, April 14, 1966, 80 Stat. 117.

The provision at issue appears in its present form at 20 U.S.C. § 903(c) (1976) and provides that:

“The Secretary of each military department shall fix the basic compensation for teachers and teaching positions in his military department at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population.”

The Court of Appeals held that DOD’s calculation of the Overseas Dependents Schools (ODS) teachers’ salaries by using the preceding year’s salaries of stateside teachers violated the statutory requirement that ODS teachers are to be compensated “at rates *equal* to the average of the range of rates of basic compensation for similar positions * * *” (*italic added*), and directed DOD to calculate the teachers’ salaries on the basis of the current salaries being paid to teachers in comparable stateside school systems. The Court also held that salary grade, steps, and credit for past teaching experience were part of “basic compensation” so as to bring them under the coverage of the “equal to” requirement of the Act. Finally, the Court held that the plaintiffs were entitled to recover money damages and remanded the case to the United States District Court for the District of Columbia. That Court had enjoined DOD from refusing to place ODS teachers in steps comparable to those in which they would have been placed in the United States, but denied monetary relief and other relief sought by the teachers. A judgment implementing the Court of Appeals decision was entered in the District Court on June 30, 1975, providing backpay for the plaintiffs for the period from April 14, 1966, to the date of that Judgment.

March was brought as a class action and out of a total of approximately 23,000 potential plaintiffs, four individuals, one of whom was Mr. Trecosta, were specifically excluded from coverage under the Judgment. The three individuals other than Mr. Trecosta were excluded because they specifically chose not to be members of the class. Mr. Trecosta was excluded because in 1971, appearing *pro se*, he had brought an action in the Court of Claims, contending, as did the plaintiffs in *March*, that the provisions of Public Law 89-391, mandated the computation of salary rates for overseas teachers on the basis of the current salaries, rather than the prior year’s salaries, of stateside teachers. The Court of Claims, 3 years prior to the *March* decision, decided the case on cross motions for summary judgment, issuing a brief order denying Mr. Trecosta’s claim. *Trecosta v. United States*, 194 Ct. Cl. 1025 (1971).

The Court of Claims reasoned that, although Congress knew that, under an earlier statute, DOD used the prior year’s salaries of stateside teachers to set rates, the legislative history of Public Law 89-391 established that Congress did not intend to modify that procedure. The Court of Appeals in *March* took note of the *Trecosta* decision but disagreed with its conclusion.

It appears that, but for Mr. Trecosta’s suit in the Court of Claims, he would have been considered part of the plaintiff-class in

March. Furthermore, but for that suit, he could have been paid administratively. After *March* was decided, Mr. Trecosta wrote to our Claims Division requesting retroactive adjustment of his salary on the basis of that decision. By Settlement Certificate Z-2272889, August 6, 1975, our Claims Division denied his claim, stating that the matter was a *res judicata* and that the provisions of section 2519, title 28 of the United States Code precluded administrative payment of his claim. That section provides that:

“CONCLUSIVENESS OF JUDGMENT

“A final judgment of the Court of Claims against any plaintiff shall forever bar any further claim, suit, or demand against the United States arising out of the matters involved in the case or controversy.”

In our decision, *Llewellyn Liber et al.*, 57 Comp. Gen. 856 (1978), we adopted the interpretation of Public Law 89-391 set forth in *March*, and we held that, in contrast to Mr. Trecosta, the three individuals who opted out of the plaintiff class in *March* could be paid backpay on an independent administrative basis.

Mr. Trecosta is thus one of the few overseas teachers, but not the only one, who has not been compensated for the period DOD improperly computed their pay. We have been advised by the Department of Defense that 20,781 overseas teachers have been compensated under the *March* Judgment. The difference between this figure and the approximate total of 23,000 potential plaintiffs is apparently attributable to those teachers who asserted claims after the time limits set forth in the Judgment, those who were identified but could not be located despite efforts, and those who were identified but no attempts were made to locate because of insufficient information. However, no other individual is in precisely the same position as is Mr. Trecosta. Only Mr. Trecosta challenged DOD's practices and was excluded from the class solely because of that challenge.

Claims submitted to the Congress under the Meritorious Claims Act are generally limited to those which are unusual and, for the most part, we decline to report cases where the circumstances are likely to recur. To do so might result in preferential treatment of one individual over others similarly situated. Although, as we have pointed out, Mr. Trecosta is not the only overseas teacher who was not compensated, we believe his situation is extraordinary and contains such elements of equity as to be deserving of the consideration of Congress.

In order to prevent preferential treatment of Mr. Trecosta, however, we believe that any relief the Congress may grant him should be limited as was the relief received by the plaintiffs in *March*. The Judgment limited the recovery of each individual class member to the gross amount of \$10,000, and from that amount deductions were to be made, as applicable, for Civil Service Retirement, Social Security, Federal Employees Group Life Insurance, Federal income tax withholdings, and any other similar or related rights and obligations. In our decision *Overseas School Teachers*, B-157414, April 26, 1978, we held that members of the plaintiff-class in *March* could not recover on an administrative claim for backpay in excess of the \$10,000 jurisdictional limitation of the District Court im-

posed by 28 U.S.C. § 1346(a)(2). Therefore, our proposed language for the bill for Mr. Trecosta's relief contains the provision that his recovery shall be computed by the same method and will be limited to the same extent as that received by the plaintiffs in *March*.

If the Congress should concur in our recommendation in this case, it is our opinion that enactment of a statute in substantially the following language will accomplish the relief recommended:

"Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled. That the Secretary of Defense be, and hereby is, authorized and directed to settle and adjust the claim of Mr. Rocco A. Trecosta, an employee of the Department of Defense Overseas Dependents Schools, for back-pay by the same method and to the same extent as if he were a member of the plaintiff class in *March v. United States* 506 F. 2d. 1306 (D.C. Cir. 1974). Such claim shall be payable from the applicable appropriations of the Department of Defense."

Sincerely,

MILTON J. SOCOLAR
(For Comptroller General of the United States).

AMERICAN FEDERATION OF TEACHERS,
Washington, DC, July 25, 1995.

Mr. CHARLES A. BOWSHER,
Comptroller General, General Accounting Office,
Washington, DC.

DEAR MR. BOWSHER: I am writing to request the attention of the General Accounting Office to a meritorious claim, B-156439, that has languished for more than 13 years. Mr. Rocco A. Trecosta, formerly a teacher in the Department of Defense Dependent Schools and a retired member of the American Federation of Teachers, has been denied justified back pay because of the loss of a suit challenging the computation of pay for DODDS teachers. Subsequently a class action suit on this issue prevailed, but Mr. Trecosta was excluded from the settlement because of his failed individual action.

On July 12, 1982, GAO sent to Congress proposed legislation under the Meritorious Claims Act to correct this inequity. No action was ever taken on this bill and the committees of jurisdiction never considered it. Mr. Trecosta, a former member of our union now living in Florida, asks that GAO please consider resubmitting on his behalf a request for his justified back pay. I hope this can be swiftly done and that the 13 year delay can be corrected by passage of a bill granting the back pay to which Mr. Trecosta is entitled.

I am writing on Mr. Trecosta's behalf at this request. I have no financial interest in this matter.

Thank you for your attention.

Sincerely,

GREGORY A. HUMPHREY,
Executive Assistant to the President
and the Secretary-Treasurer.